



**MONTGOMERY  
& ANDREWS**

**KEVIN M. SEXTON**

Cell: (505) 228-8928

Email: ksexton@montand.com

Reply To: Albuquerque Office

www.montand.com

---

February 15, 2012

**Via Electronic Mail**

Traci J. Wolf, Esq.  
Wolf & Fox, P.C.  
1200 Pennsylvani St., NE  
Albuquerque, NM 87110-7400

**Rule 408 Communication**

**Re: Past Due Amounts for Professional Services – The Downs at Albuquerque**

Dear Ms. Wolf:

As you are aware, our firm has been retained by NCA Architects, P.A. ("NCA") to assist it in collecting amounts due and owing from Paul Blanchard and/or The Downs at Albuquerque, Inc. ("The Downs") relating to certain professional design services provided by NCA and/or its consultants relating to The Downs at Albuquerque ("Project"). In that regard, in or about August 2008, Mr. Blanchard and/or The Downs retained NCA to perform certain design services relating to the Project. As of today's date there is an outstanding balance relating to the Project of **\$388,953.17** (principal - \$227,434.57; interest - \$145,598.18; NMGR - \$15,920.42). A copy of NCA's Invoice No. 16030, as of January 31, 2012, is attached hereto. Please note that the referenced outstanding balance and attached invoice have been reduced to reflect agreements that we understand have been reached by and among The Downs, Ewing Cole and D. Mark Goodwin & Associates, P.A. ("Goodwin"), pursuant to which the named parties have amicably resolved any and all claims for fees and/or costs that Ewing Cole and/or Goodwin have or could have against NCA relating to the Project. If our understanding in this regard is inaccurate please let us know and we will revise our demand accordingly.

Recently, our clients were attempting to amicably resolve this matter by negotiating a new agreement that would provide for the retention of NCA and its consultants to perform professional design services relating to the Project. Pursuant to your letter, dated January 27, 2012, we understand that Mr. Blanchard and/or The Downs have decided to terminate negotiations on such an agreement. While Mr. Blanchard and/or The Downs decision in this regard would appear to have also terminated the parties' efforts to amicably resolve the issue of past due professional design-related fees and

{00350809-  
1}

---

**REPLY TO:**

6301 Indian School Road NE, Suite 400  
Albuquerque, New Mexico 87110  
Telephone (505) 884-4200 • Fax (505) 888-8929

Post Office Box 36210  
Albuquerque, New Mexico 87176-6210

---

325 Paseo de Peralta  
Santa Fe, New Mexico 87501  
Telephone (505) 982-3873 • Fax (505) 982-4289

Post Office Box 2307  
Santa Fe, New Mexico 87504-2307

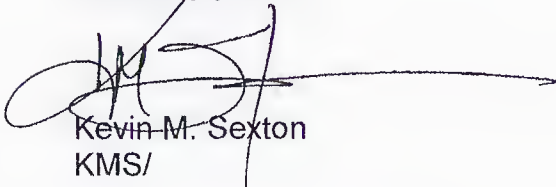
Traci J. Wolf, Esq.  
February 15, 2012  
Page 2

---

costs for the Project, in your letter, you indicated that The Downs intends to engage in further direct negotiations with each of NCA's consultants "to fully resolve those accounts". NCA does not oppose The Downs' plan to engage in direct negotiations with any of its consultants on the Project. In this regard, so as to avoid any later confusion, the following is a list of NCA's remaining consultants which have outstanding balances for professional services rendered on the Project: Chavez-Grievies Consulting Engineers, Inc.; Geo-Test, Inc.; Bridgers & Paxton Consulting Engineers, Inc.; and Terry Brown. Please advise whether The Downs' direct negotiations will exclude any of the listed consultants.

While NCA is willing to allow The Downs a reasonable period of time to "fully resolve those accounts" with its remaining consultants, given the age of these receivables, NCA cannot agree to an open-ended period of time to complete such negotiations. Accordingly, we would request that you advise us, no later than **Friday, March 2, 2012**, of the status of The Downs negotiations with each of the remaining consultants. We appreciate your assistance in this regard.

Sincerely yours,



Kevin M. Sexton  
KMS/

cc: Robert Calvani, AIA  
NCA Architects, P.A.



ARCHITECTS • PLANNERS • AIA

*Celebrating 32 Years of Quality Design & Excellent Client Service*1306 Rio Grande Blvd. NW, Albuquerque, NM 87104 • 505.255.6400 Voice • 505.268.6954 Fax  
www.nca-architects.com info@nca-architects.com

# Invoice

Invoice No: 16030

January 31, 2012

To: The Downs at Albuquerque, Partnership  
 5850 Eubank Blvd NE  
 Suite B-62  
 Albuquerque, NM 87111

**Project: A0814 The Downs at Albuquerque, Inc.**  
 Professional Services for the Period: 3/8/2009 to 1/7/2012

**Billing Group: 001 Phased Fixed Fee**  
**Professional Services**

| Phase                  | Phase Fee      | Percent Complete | Fee Earned   | Prior Billing | Current Fee |
|------------------------|----------------|------------------|--------------|---------------|-------------|
| Contract               | 116,850.00     | 100.00           | 116,850.00   | 116,850.00    | 0.00        |
| Schematic Design       | 233,700.00     | 100.00           | 233,700.00   | 233,700.00    | 0.00        |
| Design Development     | 350,550.00     | 100.00           | 350,550.00   | 350,550.00    | 0.00        |
| Construction Documents | 1,168,500.00   | 0.00             | 0.00         | 0.00          | 0.00        |
| Construction Admin.    | 467,400.00     | 0.00             | 0.00         | 0.00          | 0.00        |
| Totals:                | \$2,337,000.00 |                  | \$701,100.00 | \$701,100.00  | 0.00        |

Billing Group 001: Total Billed: 701,100.00  
 Less Payments received: - 270,665.43  
 Less Ewing Cole Billing Released: - 237,000.00  
 Balance Past Due: 193,434.57  
 Finance Charges: 123,832.19  
**Billing Group 001: Total: \$317,266.76**

**Billing Group: 001A Cost Plus Reimbursable Expenses**

Billing Group 001A: Balance Past Due: \$22,068.12  
 Less Payments received: - 16,704.21  
 Less Total released by Ewing Cole: - 5,363.91  
**Billing Group 001A: Total: \$0.00**

**Billing Group: 003 Fixed Fee Site Work**

Contract Amount: \$227,000.00  
 Percent Complete: 85.50%  
 Fee Earned: \$194,080.00  
 Prior Fee Billings: 194,080.00

Billing Group 003: Total Billed: \$194,080.00  
 Less Payments received: - 154,960.00  
 Less Total released by Mark Goodwin & Associates, P.A.: - 39,120.00  
**Billing Group 003: Total: \$0.00**

**Billing Group: 004 Fixed Fee Traffic Study**

Contract Amount: \$45,000.00  
Percent Complete: 22.22%  
Fee Earned: \$10,000.00  
Prior Fee Billings: 10,000.00

Billing Group 004: Balance Past Due: \$10,000.00  
Finance Charges: \$ 6,401.76  
**Billing Group 004: Total: \$16,401.76**

**Billing Group: 005 Fixed Fee Soils**

Contract Amount: \$24,000.00  
Percent Complete: 100.00%  
Fee Earned: \$24,000.00  
Prior Fee Billings: 24,000.00

Billing Group 005: Balance Past Due: \$24,000.00  
Finance Charges: 15,364.23  
**Billing Group 005: Total: \$37,203.07**

**Project Totals:**

Previous billing Past Due: \$227,434.57  
Finance Charges: \$145,598.18  
Gross Receipts Tax @ 7%: \$15,920.42  
Total Balance Due as of 1/31/2012: \$388,953.17

**\*\*\* Total Project Invoice Amount: \$388,953.17**

**Aged Receivables:**

| <u>Total Outstanding A/R</u> | <u>Current</u> | <u>31-60</u> | <u>61-90</u> | <u>91-120</u> | <u>Over 120</u> |
|------------------------------|----------------|--------------|--------------|---------------|-----------------|
| \$388,953.17                 | \$145,598.18   | \$0.00       | \$0.00       | \$0.00        | \$243,354.99    |

*All invoices are due upon receipt. A late charge of 1.5% will be added to any unpaid balance after 15 days.*